

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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TEAM KASA, LLC, KAREN JUNE, ALEXANDER  
GILBERT, and ANNMARIE SZOLLOSI GILBERT  
f/k/a ANNMARIE SZOLLOSI,

Plaintiffs,

MEMORANDUM & ORDER  
17-CV-1074 (JS) (AKT)

-against-

RICHARD HUMPHREY and FRANCHISE BIZ  
EXPERTS, LLC,

Defendants.

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APPEARANCES

For Plaintiffs: John A. Karol, Esq.  
The Richard Rosen Law Firm, PLLC  
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New York, NY 10022

For Defendants: Todd Wengrovsky, Esq.  
285 Southfield Road  
P.O. Box 585  
Calverton, NY 11933-1763

SEYBERT, District Judge:

Pending before the Court are: (1) Defendants Richard Humphrey ("Humphrey") and Franchise BIZ Experts, LLC's ("Franchise BIZ," and collectively, "Defendants") motion to vacate the Clerk of the Court's entries of default against them, (Defs.' Mot., Docket Entry 30), and (2) Magistrate Judge A. Kathleen Tomlinson's Report and Recommendation ("R&R") recommending that this Court grant Defendants' motion and vacate their defaults, (R&R, Docket Entry 44). For the following reasons, the Court ADOPTS Judge Tomlinson's R&R in its entirety.

### BACKGROUND

Plaintiffs Team Kasa, LLC, Karen June, Alexander Gilbert, and AnnMarie Szollosi Gilbert f/k/a AnnMarie Szollosi (collectively, "Plaintiffs") commenced this action on February 24, 2017, alleging that Defendants "improperly offered or sold Plaintiffs" a franchise in violation of New York law. (Compl., Docket Entry 1, ¶ 2.) On July 11, 2017, after Defendants failed to respond to the Complaint, Plaintiffs requested that the Clerk of the Court enter Certificates of Default against them. (Req. for Default, Docket Entry 20.) The Clerk of the Court issued a Certificate of Default against Humphrey on July 21, 2017, (Humphrey Cert. of Default, Docket Entry 25), and against Franchise BIZ on July 24, 2017, (Franchise BIZ Cert. of Default, Docket Entry 27). On July 30, 2017, Defendants filed this motion to vacate the Clerk's entries of default, (See Def.s' Mot.), which this Court referred to Judge Tomlinson on October 13, 2017 for a Report and Recommendation on whether the motion should be granted, (See Referral Order, Docket Entry 43).

### The R&R

Judge Tomlinson issued her R&R on January 24, 2018. (See R&R.) Based on the information provided, Judge Tomlinson was unable to determine whether Defendants have a meritorious defense, but she found that Defendants' failure to respond was not willful and that Plaintiffs would not be prejudiced by the Court's vacating

the entries of default. (R&R at 13-23.) Judge Tomlinson thus recommended that the Court grant Defendants' motion and vacate the Clerk's entries of default against them. (R&R at 23.)

#### DISCUSSION

In reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). If no timely objections have been made, the "court need only satisfy itself that there is no clear error on the face of the record." Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (internal quotation marks and citation omitted).

Objections were due within fourteen (14) days of service of the R&R. The time for filing objections has expired, and no party has objected. Accordingly, all objections are hereby deemed to have been waived.

Upon careful review and consideration, the Court finds Judge Tomlinson's R&R to be comprehensive, well-reasoned, and free of clear error, and it ADOPTS the R&R in its entirety.

#### CONCLUSION

For the foregoing reasons, Judge Tomlinson's R&R, (Docket Entry 44), is ADOPTED in its entirety and Defendants' motion to vacate the Clerk of the Court's entries of default, (Docket Entry 30), is GRANTED. The Clerk's entries of default

against Richard Humphrey, (Docket Entry 25), and against Franchise  
BIZ Experts, LLC, (Docket Entry 27), are VACATED.

SO ORDERED.

/s/ JOANNA SEYBERT  
Joanna Seybert, U.S.D.J.

Dated: February 26, 2018  
Central Islip, New York